IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10495 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Versus

GAMBHIRBHAI GOVINDBHAI BARIA

Appearance:

MR BA VAISHNAV for PARESH UPADHYAY for Petitioner

MR RS PANJWANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/05/2000

ORAL JUDGEMENT

Rule. Mr. Panjwani, learned advocate appearing for the respondent appears and waives service of rule. With the consent of both the learned advocates, this matter is taken up for final hearing today.

2. In the present writ petition, the Award dated 1st May, 1999 passed by the Labour Court, Vadodara in Reference (LCV) No. 523 of 1991 is brought under challenge by the petitioner-Gujarat Water Resources Development Corporation Limited [hereinafter referred to as, `the petitioner-Corporation']. By the impugned Award, the Labour Court has set-aside the termination order made by the petitioner-Corporation and thereby directed the Corporation to reinstate the respondent-Gambhirbhai Govindbhai Baria [hereinafter referred to as, `the respondent workman'] in service with 75% backwages from November, 1986 till the date of the Award.

3. Mr. Vaishnav, learned advocate appearing on behalf of the petitioner-Corporation has raised same contentions which have been raised in Special Civil Application No. 10496 of 1999, which is an identical matter. The said contentions have been dealt with by me, in detail, in the earlier petition i.e., Special Civil Application No. 10496 of 1999, and therefore, same reasoning are applicable in the present case also.

4. The brief facts of the present writ petition are that the respondent-workman was working as a Bore Operator w.e.f 19th April, 1983 and he remained in service uptill November, 1986. Details of work performed by the respondent from November, 1984 to November, 1986 has been given by witness one Shri Satish Kumar Hiralal Shah in his evidence vide Exh. 13. Now, considering the actual working days from 26th November, 1986, preceding 12 months, the respondent has completed 240 days contiuous service. This is a fact finding on the basis of evidence of the petitioner, and therefore, the Labour Court has come to the conclusion that the respondent has continuously performed duty from 1984 to 1986 and he had completed 240 days continuous service till the date of his retrenchment in November, 1986. Further, at the time of retrenchment, provisions of Sec. 25-F have not been complied with by the petitioner, which has remained an undisputed fact, and therefore, the Labour Court has come to the conclusion that the termination of the respondent workman is illegal and ab inito void. The Labour Court, while delivering the Award has relied upon a judgment delivered by Division Bench of this Court in Letters Patent Appeal No. 629 of 1997 as well as also cited decision of this Court reported in 1998 (2) GLH (UJ) 16 at page 43. After considering the pronouncements of this Court, the Labour Court has ultimately come to the conclusion that the workman is entitled to reinstatement with continuity of service and had granted 75% of the

backwages from November, 1986 till the date of the Award.

5. In the present matter, Mr. Vaishnav has added one contention that the respondent workman though was terminated on 26th November, 1986, he had raised an industrial dispute on 27th November, 1991 i.e., almost after five years after his termination. Mr. Vaishnav contended that the workman had remained idle without any process of challenging the termination order, and therefore, the Award with respect to payment of 75% of the backwages from the date of termination is illegal and without jurisdiction. Mr. Vaishnav contended that the delay which has been caused in raising the dispute should not be a burden on the part of the petitioner and for such delay on the part of the workman, the Corporation should not be held liable to pay backwages for the said delayed period of almost five years. Thus, according to Mr. Vaishnav, if the workman is ordered to be reinstated in service with backwages, then at the most he is entitled to same from the date of Reference i.e., 27th November, 1991 and not from the date of his termination. Learned advocate Shri Panjwani appearing for the respondent workman has not seriously objected to the said proposition. Therefore, considering this fact and the decision of the Apex Court in the case of Mahavir Singh v. U.P State Electricity Board, 1999 (2) CLR p-7 wherein it is observed that delay in raising dispute belatedly, the workman is not entitled to full wage of the interim period. The Apex Court has further observed that merely because the dispute was belatedly raised, it does not mean that dispute ceases to exist and delay in raising the dispute is taken care of by not awarding full backwages throughout from the date of the termination till the date of reinstatement. Therefore, considering the said decision, Mr. Vaishnav is right that for the delayed period of about five years from the date of termination till the date of reference, the workman is not entitled to any amount of backwages because he has not challenged the termination order immediately or within some reasonable time, therefore, the benefit of in-action on the part of the respondent workman cannot be granted and for that such burden cannot be shifted upon the petitioner, which is a Corporation and a State Authority within the meaning of Art. 12 of the Constitution of India. The second reason is that the respondent workman who has not raised industrial dispute immediately after his termination and had remained in-active for about five years's period must have some presumption to the effect that he would not have remained totally unemployed, though there is not clear evidence that he was gainfully employed or was so well to do that

he should be denied complete backwages. Therefore, considering this aspect and submissions of Mr. Vaishnav, according to my opinion, ends of justice will be met, if the impugned award in Reference No. (LCV) 523 of 1991 dated 1st May, 1999 is modified in respect to granting of the backwages i.e., instead of - from the date of termination - from the date of Reference i.e., from 27th November, 1991. The findings in respect to termination is found to be void ab intio as provision laid down in Sec. 25-F has not been followed by the petitioner Corporation. Therefore, direction with respect to reinstatement with continuity of service is confirmed. However, only with respect to granting of the backwages, the impugned Award is modified as under :-

6. The Award in respect to granting of backwages is modified to the effect that the respondent workman is entitled to draw 75% backwages from the date of reference ie., 27th November, 1991 till the date of Award ie., 1.5.1999. Except this modification, rest of the Award shall remain intact. The respondent-workman is entitled to full wages from the date of Award i.e., 1.5.1999 till the date of actual reinstatement of workman in service.

7. In view of above observations and modification, the present writ petition is partly allowed. Rule is made absolute to the aforesaid extent. The petitioner Corporation is directed to implement the modified Award within a period of four weeks from the date of receipt of copy of this judgment.

[H.K Rathod, J.]

Prakash*